

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
(ROME DIVISION)**

In re:	:	Chapter 11
	:	
EDWARD BYRON SLAUGHTER;	:	Case No. 13-42906
E. BYRON SLAUGHTER, LLC;	:	Case No. 13-42907
APEX LOCATORS, LLC;	:	Case No. 13-42908
CHAPEL HEIGHTS, LLC; and	:	Case No. 13-42909
ROLLING HILLS PLAZA, LLC,	:	Case No. 13-42910
Debtors.		<i>Jointly Administered Under</i>
_____	/	<i>Case No. 13-42906-BEM</i>

REORGANIZED DEBTOR’S MOTION TO REOPEN CASE

E. Byron Slaughter, LLC (the “**Reorganized Debtor**”), a reorganized debtor in the above-captioned case, through undersigned counsel, hereby files this motion (the “**Motion**”) requesting that the Court (1) reopen this Chapter 11 bankruptcy case (the “**Chapter 11 Case**”). In support of the Motion, Reorganized Debtor respectfully represents as follows:

I.

STATEMENT OF FACTS

A. The Chapter 11 Case.

1. The Chapter 11 Case was filed on October 5, 2013. The Court confirmed Debtor’s First Amended Plan of Reorganization¹, filed December 1, 2015, by Order dated February 1, 2016².

¹ Capitalized terms not otherwise defined in this motion shall have the meaning proscribed in the Debtor’s First Amended Plan of Reorganization, dated December 1, 2015 [Doc. 391] (the “Confirmed Plan”)

² Order Confirming E. Byron Slaughter, LLC’s First Amended Plan of Reorganization [Doc. 454] (the “Confirmation Order”)

2. The only claims under the Confirmed Plan consist of the secured claim (the “**CRE Claim**”) of 2010- Venture, LLC, as assignee of the FDIC, as Receiver for Community Bank of West Georgia (“**CRE**”), certain priority ad valorem property tax claims and a nominal claim held by single unsecured creditor. Under the Confirmed Plan, the CRE Claim is secured by the deeds to secure debt and related collateral documents described as the “CRE Loan Documents” in the Confirmed Plan consisting of approximately forty-five (45) parcels of improved and unimproved real property described as the “CRE Collateral” in the Confirmed Plan.

3. On September 23, 2016, the Court entered its Order and Final Decree [Doc. 516] closing the Chapter 11 Case.

B. The Court Should Reopen the Chapter 11 Case.

5. Section 350(b) of the Bankruptcy Code provides, *inter alia*, that a case may be reopened in the court in which it was closed “to accord relief to the debtor, or for other cause.” 11 U.S.C. § 350(b).

6. Bankruptcy Rule 5010 authorizes the debtor (or any other party in interest) to file a motion to reopen a case. Fed. R. Bankr. P. 5010. Furthermore, Bankruptcy Rule 9024 expressly excepts a motion to reopen under Rule 5010 from the one year time limit of FRCP 60. Fed. R. Bankr. P. 9024. Therefore, there is no time limit for a motion to reopen, and it may be brought within any reasonable time. See In re Narod, 138 B.R. 478, 483-84 (E.D. Pa. 1992); In re Rex, 217 B.R. 57, 61 (Bankr. E.D. Pa. 1998); Stackhouse v. Plumlee (In re Plumlee), 236 B.R. 606, 610-11 (E.D. Va. 1999) (creditor's motion to reopen a chapter 7 case granted even though the motion was filed five years after the case was closed).

7. A bankruptcy court's exercise of its authority to reopen a closed case “is entirely within its sound discretion, based upon the circumstances of each case.” Pajarillo v. JPMorgan Chase Bank, N.A. (In re Pajarillo), 2014 U.S. Dist. LEXIS 36004, at *19 (D. Nev. 2014) (quoting In re Castillo, 297 F.3d 940, 945 (9th Cir. 2002)). Moving to reopen a bankruptcy case is a proper procedural avenue whenever a debtor seeks to enforce the discharge injunction. See In re Grialva, 2013 Bankr. LEXIS 4057, at *8 (Bankr. D. Nev. 2013) (citing Barrientos v. Wells Fargo Bank, N.A., 633 F.3d 1186, 1190 28 (9th Cir. 2011)); Alderwoods Grp., Inc. v. Garcia, 682 F.3d 958, 965 (11th Cir. 2012).
8. The Reorganized Debtor seeks to reopen the Chapter 11 Case to allow the Court to consider the Reorganized Debtor’s motion (the “**Debtor Motion**”) to enforce certain terms of the Confirmed Plan which the Reorganized Debtor contends are being violated by Apex Bank (“**Apex**”), the current holder of the secured claim (the “**CRE Claim**”) of 2010- Venture, LLC, as assignee of the FDIC, as Receiver for Community Bank of West Georgia (“**CRE**”) under the Confirmed Plan, and the requirements for the sale of real properties under the Confirmed Plan free of the CRE Claim. The specific issues raised by the Debtor Motion are (1) Apex’s refusal, as holder of the CRE Claim (“**Apex**”), to apply the principal amount of certain purchase money promissory notes constituting proceeds from the sale of CRE Collateral, which notes have been assigned to Apex, in reduction of the principal balance of the CRE Claim, and (2) Apex’s refusal to provide or confirm the payoff amounts necessary to obtain the release of properties proposed to be sold by the Reorganized Debtor from the lien of the CRE Loan Documents.

WHEREFORE, the Reorganized Debtor respectfully requests the entry of an order:

- (a) Reopening the case to consider the Reorganized Debtor's motion to enforce the terms of the Confirmed Plan and Confirmation Order;
- (b) any other relief the court finds appropriate.

This the 16th day of July, 2019.

SMITH CONERLY LLP
Attorneys for Debtor

/s/ J. Nevin Smith
J. Nevin Smith
jsmith@smithconerly.com
Georgia Bar No. 661110

402 Newnan Street
Carrollton, Georgia 30117
770-834-1160

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*Jointly Administered Under
Case No. 13-42906-BEM*

_____ /

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing REORGANIZED DEBTOR'S MOTION TO REOPEN CASE will be served upon the parties listed on Exhibit "A" attached hereto by depositing a copy of same in the United States Mail with sufficient postage thereon.

This 16th day of July, 2019.

/s/ J. Nevin Smith
J. NEVIN SMITH
Georgia Bar No. 661110

Smith Conerly LLP
402 Newnan Street
Carrollton, GA 30117
(770) 834-1160

EXHIBIT "A"

Martin P Ochs
behalf of Guy Gebhardt UST
362 Richard Russell Bldg
75 Spring St SW
Atlanta GA 30303-3315

Apex Bank-Knoxville
430 Montbrooke Lane
Knoxville, TN 37919

Jed L. Frankel
Eisinger, Brown, Lewis & Frankel, P.A.
Presidential Circle
Suite 265 South
4000 Hollywood Blvd.
Hollywod, FL 33021-6782

Matthew Graves, Esq.
Apex Bank-Knoxville
430 Montbrooke Lane
Knoxville, TN 37919

Paul Reece Marr
Paul Reece Marr, P.C.
300 Galleria Parkway, N.W.
Suite 960
Atlanta, GA 30339

John A. Christy
Schreeder, Wheeler
& Flint, LLP
1100 Peachtree Street
Suite 800
Atlanta, GA 30309-4516

Wendell S. Agee
The Agee Law Firm, LLC
P. O. Box 2374
Buford, GA 30515-9374

Jed L. Frankel
Eisinger, Brown, Lewis & Frankel, P.A.
Presidential Circle
Suite 265 South
4000 Hollywood Blvd.
Hollywod, FL 33021-6782

Peoples Independent Bank, a corporation
c/o David Lee Jones
P.O. Box 940
Guntersville, AL 35976-0940

A. Michelle Hart Ippoliti
McCalla Raymer Leibert Pierce, LLC
1544 Old Alabama Road
Roswell, GA 30076-2102

Ron C. Bingham II
Baker, Donelson, Bearman
Caldwell & Berkowitz, PC
Monarch Plaza, Suite 1600
3414 Peachtree Road, N.E.
Atlanta, GA 30326

Peoples Independent Bank, a corporation
c/o David Lee Jones
P.O. Box 940
Guntersville, AL 35976-0940

G. Phillip Beggs
Moore Ingram Johnson & Steele, LLP
Emerson Overlook
326 Roswell Street
Marietta, GA 30060-8223

Martha A. Miller
Schulten Ward & Turner, LLP Suite 2700
260 Peachtree Street, NW
Atlanta, GA 30303-1240

David W. Cranshaw
Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, N.E.
Atlanta, GA 30326-1044

Garrett H. Nye
Cohen Pollock Merlin & Small, P.C. Suite 1600
3350 Riverwood Parkway
Atlanta, GA 30339-3359

Thomas D Richardson Esq
Brinson, Askew, Berry et al
PO Box 5007
Rome GA 30162-5007

J. Andrew Owens
Magruder and Summer
P. O. Box 627
Rome, GA 30162-0627

Howard D. Rothbloom
The Rothbloom Law Firm
Suite 400
309 E. Paces Ferry Road
Atlanta, GA 30305-2319

Jonathan Turner Edwards
Alston & Bird, LLP
1201 West Peachtree Street
Suite 4900
Atlanta, GA 30309-3424

John D. Schlotter
Aldridge Pite, LLP
Fifteen Piedmont Center
Suite 500
3575 Piedmont Rd., NE
Atlanta, GA 30305-1636

Ira L. Rachelson
Rachelson & White, PC Suite 2110
3350 Riverwood Parkway
Atlanta, GA 30339-3363

Kelly E. Waits
Burr & Forman, LLP Suite 1100
171 17th Street, NW
Atlanta, GA 30363-1029

Kimberly D. Rayborn
McCalla Raymer LLC
1544 Old Alabama Road
Roswell, GA 30076-2102

Brian Richard Bojo
McRae Smith Peek Harman & Monroe LLP
P. O. Box 29
Rome, GA 30162-0029